

DETAILED ACTION

Response to Amendment

1. The objection to the specification has been withdrawn in light of applicants' amendments to the specification and submissions of the material data safety sheets for the trademarked items.

The rejections under 35 U.S.C. § 112, second paragraph, have been withdrawn in light of applicants' amendments to the specification and submissions of the material data safety sheets.

The previous rejections under *Pearson et al.* have been withdrawn in light of applicants' amendments and arguments.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Art Unit: 1797

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims **1-163** are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-33 of U.S. Patent No. 6,906,327. Although the conflicting claims are not identical, they are not patentably distinct from each other because it is inherent that one must first identify a contaminant in order to determine the amount of a contaminant in a sample. Thus, it would have been obvious for one of ordinary skill in the art determining the amount of a contaminant on a substrate to first determine the identity of the contaminant by correlating the at least two absorbance peaks.

4. Claims **1-163** are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-42 of U.S. Patent No. 6,956,228. Although the conflicting claims are not identical, they are not patentably distinct from each other because it is inherent that one must first identify a contaminant in order to determine the amount of a contaminant in a sample. Thus, it would have been obvious for one of ordinary skill in the art determining the amount of a contaminant on a substrate to first determine the identity of the contaminant by correlating the at least two absorbance peaks.

Response to Arguments

5. Applicant's arguments, see Amendment after Non-Final, filed March 4, 2008, with respect to the rejection(s) of claim(s) 1-163 under Pearson et al. have been fully considered and are persuasive. Therefore, the rejection has been withdrawn.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KERI A. MOSS whose telephone number is (571)272-8267. The examiner can normally be reached on 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on (571)272-1700. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Keri A. Moss/
Examiner, Art Unit 1797

/Jill Warden/
Supervisory Patent Examiner, Art Unit 1797